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ABSTRACT

Court cases dealing with school desegregation have become increasingly complex over the years. The major portion of this paper highlights six of those cases, which provide a picture of the shifting positions of the federal judiciary on the subject. The purpose of the discussion is to allow school administrators to incorporate the current law into school district practice. Specific problems connected with school desegregation, like the problem of busing, are also explored. The paper concludes that educational administrators have played a key role in helping racial minorities in the past two decades. It recommends that new forms of cooperation be developed among a variety of educational agencies. (Author/LD)

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# Racial Desegregation in Schools

and

# Evolving Law: The 1980s

by

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## Introduction

Racial segregation has been treated so narrowly and politically by the American judiciary, that it is difficult today to sustain any other approach to the problems of multi-racial groups in a single society. That is not a blameful observation; it is descriptive. Racial desegregation in public schools is a question on which many people hold strong opinions, and those go in many directions. Some school administrators prefer a descriptive approach; others approach the problem from an advocacy perspective. Some want only an exploration of the most promising classroom activities for the promotion of racial integration. This presentation is a description and analysis of race and schools using some pertinent court cases and some amplifying comments.

The racial desegregation of public schools has been, for a quarter of a century, the single question that has attracted the most time, attention, and money in the operation of those schools. The Supreme Court pronounced the

Brown decision in 1954. When closely examined, desegregation has turned out to be many subsequent questions. Examples of some of the major questions are:

1. What is the composition of the student body in a racially desegregated school?
2. What can be done in integrated schools to make them contributors to improved race relations?
3. Should present housing patterns for citizens be overcome legally, when they tend to produce racially segregated schools?
4. Are any operational costs too high when they contribute to the achievement of racially desegregated schools?
5. What are the consequences of racial desegregation on academic achievement, and how can that achievement be measured?

Such a short list is merely an indicator of the complexities in the organization and administration of schools after an order from a court or federal agency to desegregate the school district.

America is involved in an era of change, with a heightened emphasis put upon individual rights. Social pluralism has become a key word of the era. Consequently, social stability has decreased. Change is a part of the drive for civil rights. Many social conditions are transitional, but not all school patrons want them to be. Some want them to be as they were, formerly; some are impatient for the way they hope those conditions will be.

Desegregation is making extensive demands on the public schools specifically, and the entire political system, generally. In that sense, it is no different from many other social movements that have come upon the American scene from time to time. Yet, it contains some major differences; e.g., its disruption of customary neighborhood living patterns, its high

dollar cost, its logistical problems of physically moving thousands of people to distant places--on a schedule--and its prejudicial roots.

It seems reasonable to say that desegregation, as viewed in the 1950s, arose out of intense frustrations and dissatisfactions; it is also reasonable to point out that as it was handled through the 1970s, it became a generator of intense frustrations and dissatisfaction--without regard to race. Increasingly, it is a difficult question for courts to handle because it has come to involve not only the fact of segregation, but also the methods of addressing it. The logistical problems of accomplishing racial desegregation, using the public schools as the main tool, are impressive. Some of those problems become apparent through an examination of the population of the U.S.

With the time for census-taking fast approaching, estimates of the population are likely to have more error than any spokesman would desire. However, from several sources, the following description of the nation's population in Table 1 is suitable for a discussion of racial desegregation in the schools.

The distribution of people by race has generally been overlooked, seen as an unaccounted factor within the problems of racial desegregation in public schools. In a way, it is the key factor. That is, if racial groups in the American population were proportionately distributed through the geography of the nation, and if there were no dual school systems--and they have been eliminated as a consequence of the Brown case in 1954--then, racial desegregation would automatically occur. Under compulsory education laws, it takes only a racially open free public school system and proportionate distribution of races, geographically, to accomplish a desegregated school.

Table 1
Distribution of American Population
by Race

| Citizen Groups | | |
|---|---|---|
| Labor Dept. (1960s) | EEOC (1980s) | Proportion (est: 1980) |
| Negroes | Black, not Hispanic | 12.0% |
| Spanish-Spk. Ams. | Hispanic | .8 |
| Native Americans | Am. Ind./Alaska | .4 |
| Orientals | Asian/Pacific Islands | .8 |
| Whites | White, not Hispanic | 86.0 |
| | 220,000,000 Americans = | 100.9% |

In 1980, all public school systems must be racially open, by law; i.e., none are any longer dual systems for the separation of pupils by race. The problem lies in the distribution of the population, which is racially disproportionate, and the freedom of movement that American citizens have. Americans tend to cluster, often by racial or ethnic identity, and to move about as freely as personal economics allow. After all considerations are taken together, the American adult population is very often segregated by race. Blacks tend to cluster. So do Hispanics, Asiatics, and whites. Children live in those places where the adults live. As the American population climbs during the 1980s, the smallest proportionate increase will be among whites, and by far the largest proportionate increase will be among Hispanics and Asiatics.

The Cases

Thousands of cases have now been heard by courts as pursuit of desegregated public school classrooms has proved to be elusive and difficult. Originally, the question was focused upon equal but separate facilities with the separation between blacks and whites. Since then, questions have become at once more complex and specialized, and increasingly detailed, with operational logistics as the central focus. To show the change, six cases were selected and highlights taken from each.

Plessy v. Ferguson 163 U.S. 537 (1896)

Louisiana had a statute specifying that black citizens could not mix with whites when traveling on the public railways in the state. Homer Plessy wanted to sit in the section of the car reserved for whites, and refused a conductor's demand to go to the rear and sit with the blacks. The question was, "Was there a violation of Constitutional rights by the state, in light of the equal protection guaranteed all citizens under the Fourteenth Amendment?" The court noted that ticket costs were the same, passengers left from the same departure point, their time of travel was the same, and so on, without regard to race. A point made by Justice Harlan that the Constitution should be color blind, providing neither advantage nor disadvantage to any citizen on the basis of race, became a dissent as the court ruled in favor of the Louisiana law. The ruling gave birth to the concept of "separate but equal facilities" and provided the basis for seventeen states to establish and maintain dual school systems--one for blacks and one for whites--through the first half of the twentieth century.

Brown v. Board of Education of Topeka 374 U.S. 483 (1954)

In addition to the seventeen states that had statewide dual school systems, four others allowed them in school districts of certain types. Kansas was one

of the four. When heard before the Kansas Supreme Court, this question about schools for blacks only resulted in a decision that was narrow, and noted only that the Kansas legislature had not exceeded its own constitutional bounds. Upon appeal to the Supreme Court, similar cases from three other states were heard simultaneously. The justices were not so interested in evidence to support the equalness of separate facilities; i.e., quality of buildings, convenience of location, classrooms available, and so on. These were arguments of little importance as the Court focused upon the effects of separation. Becoming convinced by evidence that psychological damage was an inevitable consequence of separation when that separation carried a heavy implication of black inferiority, the Court overturned Plessy, and stated that "separate facilities were inherently unequal." Followed by another decision in 1955, Brown II, the Court directed that the dual public school systems should be dismantled and that racial desegregation should occur "with all deliberate speed."

Green v. New Kent County (VA) 391 U.S. 430 (1968)

Questions about the techniques of desegregation came to the Court. Pupil sorting and assignment techniques were central. Not all areas of the nation were willing to actively pursue a desegregation plan. One plan for pupil sorting and assignment was called the "freedom of choice" plan. In New Kent County, there were two K-12 public schools. Historically, one had been for black children, one for whites. They were located at opposite ends of the county. In the main, the housing pattern in this rural county was racially integrated. During the 1960s, the local school board altered its pupil assignment plan, allowing students to choose for themselves which school they wanted to attend, committing to that choice as it was made at certain times in their career as students. In this case, the Court asked a new

question, "Has your plan for desegregation produced desegregated schools, or are they, substantially, still segregated by race?"

Reviewing the evidence, the Court found that after having a choice extended, very few students chose to go to the other school, even though it might have been closer to their home in many cases. With the burden of proof shifted to the examination of the effects of the plan, the Court stated that a "freedom of choice" plan might be an important part of racial desegregation, but its ineffectiveness in New Kent County left that school district in violation of the mandate to desegregate. Green respresented a substantial extension of the findings and orders in Brown.

Swann v. Charlotte-Mecklenburg Board of Education 402 U.S. 1 (1971)

This involved a large school district with many school buildings scattered over an urban-rural setting, and the Supreme Court used the case to address more than one question. "Was it reasonable to determine the proportion of blacks and whites in the school district and then make that a target for the racial proportions in every student body?" The Court stipulated that a target could not be a quota, but could and should provide a helpful index to a local board considering questions of pupil assignment, where racial desegregation was a factor. "Could desegregation efforts be restricted by the obligation of keeping pupil walking distances to a minimum?" The Court stated that desegregation could not be limited to walking distances, that pupils should be transported when that was a feasible technique to work toward the target numbers in the proportion. That decision also included detailed descriptions of many additional techniques that any local board might use to alter the racial proportions of pupils in schools, and those became specific obligations of the C-M Board of Education.

Keyes v. School District #1, Denver 413 U.S. 189 (1973)

The Keyes case was noteworthy for a number of reasons. The Colorado Constitution prohibited the classification of pupils by race or color. So, there was no question about a state mandated dual school system. The Denver Public School District was the first northern school board to be found guilty of the racial segregation of pupils. The school district was tri-racial. Those factors created a new situation, calling for new definitions of common words and understandings in the conditions of racial segregation. Segregation in the north and central area of the district became the basis for a district wide desegregation order. The case had five district court hearings, five circuit court hearings, and was attended twice by the U.S. Supreme Court.

After examining the racial and ethnic composition of the schools, the Court determined that isolation of either Negroes or Hispanos would constitute segregation, on the basis of similarly being economically and culturally deprived groups. Examination of board action during the 1960s revealed that attendance boundaries had been changed, new buildings constructed, temporary buildings erected, and student assignment techniques introduced, all of which contributed to the segregative result in the north and central area of the school district. Noting that a segregated registration in one school carried a ripple effect to every other school in the system of 119 schools, the remand to the District Court implied the reasonableness of a system-wide remedy. In effect, the order substantially altered the customarily understood notion of the neighborhood public school where there had not been de jure segregation.

School District of Omaha v. United States 433 U.S. 667 (1977)

Initially, this case was heard, twice, before the District Court.* That Court examined data about pupil registration by race, pupil transfer policies,

*367 F. Supp. 179 (1973) and 389 F. Supp. 293 (1974)

faculty assignment by race, building construction, attendance zone boundaries, and so on. Also considered was the rationale of the board in those decisions. The burden of proof was placed upon the plaintiffs, demanding that there had to be shown an "intentionally segregative policy practiced in a meaningful or significant part of the school system."

Some schools--elementary, junior high and senior high--were at the time the suit, de facto segregated with a majority black students. The Omaha Public Schools' enrollment was 19.8% black in 1973. The ruling was that the racial imbalance was not intentionally caused or maintained.

Viewing essentially the same evidence, the Circuit Court* shifted the burden of proof to the local school board, holding it to account for its actions and inactions, and the segregated condition of certain schools. Upon that board's inability to establish that segregation intent was not among the reasons for their actions during the 1960s, and prior, the ruling was that the Omaha Public Schools was in violation of the Constitution and that segregation must be eliminated "root and branch." The Supreme Court agreed.

Taken as a group, these cases provide a picture of the shifting positions of the federal judiciary on the central question. They provide a base from which school administrators can view their own districts and incorporate the current law into the operational practices of that district. They also provide clear warning that past judiciary perceptions of segregation may not be a protection for school districts that have multi racial populations, and that those districts need to periodically and systematically engage the question, "Is suitable provision being made in our schools to diminish disadvantages that may come with being a member of a racial minority or a low socio-economic group?"

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*521 F 2d 530 (1975)

Specific Problems

For sheer complexity, the Los Angeles Public Schools and the logistics of desegregating--even with all of the techniques possible--stands as an example of extraordinary effort and expense. A similar experience appears to be on the horizon for the Chicago Public Schools.

There is a basic question of school finance underlying much of the controversy on school desegregation. Initially, the Supreme Court declared separation by race to be inherently unequal, without regard to the actual conditions of the separate facilities. Title I of the ESEA of 1964 was, partially, a legislative response to the recognition that money--i.e., educational resources--should be allocated on some basis of student need. For students who had a greater educational need, more resources should be made available. Fairness indicated the suitability of that system. A recognition was developing that, disproportionately, black schoolchildren were also the children from socio-economically deprived homes. An important idea was gaining political and legal support: out of socially imposed deprivation should come a period of time for extraordinary compensation. At some point in time, recently, the federal government also slipped into the decision to use local public schools as the primary tool through which to address the problem of racial and socio-economic strife. That decision has produced great expectations, great anguish, and situations of intense irony and disappointment.

From the federal court decisions on school desegregation an expectation arose about twenty-five years ago that by modifying the attendance patterns, some kind of equal opportunity would be created which would, in turn, produce more equal results. It is a rather simplistic view of mankind in which human beings are viewed as substantially more mechanistic creatures than the real evidence warrants. Inequality is the rule in human behavior; equal performance is the exception. Some people excell in one thing, some in another. Some

seldom or never excell, and all of that is without regard to race. Americans have a confused and uncertain notion of what should be expected from the basic political documents of our nation, as equality was addressed in them. That uncertainty is partially responsible for the strong disagreements that have arisen about what the schools should--and can--do within the context of racial desegregation. Table 2, centered upon three questions, reveals substantial differences in the population about procedures, effects, and opportunities, as those aspects of education inter-relate with public education.

Table 2

Public Perceptions of Influences on Childrens' Education

| Question | Responses of Parents: Total | Good Effect | No Effect | Bad Effect | Depends Upon | No Opinion |
|---|---|---|---|---|---|---|
| Does racial integration of the schools have a good effect, bad effect, or no effect at all on the education most children receive? | 100% | 21 | 39 | 23 | 7 | 10 |
| What about busing? Has it had a good effect, a bad effect, or no effect at all upon the children involved? | 100% | 13 | 19 | 48 | 4 | 16 |

| In your opinion, do black children and other minorities in this community have the same educational opportunity as white children? | Public Responses: White Yes | White No | White Don't Know | Black Yes | Black No | Black Don't Know |
|---|---|---|---|---|---|---|
| | 86 | 8 | 6 | 38 | 52 | 10 |

Source: 1978 polls reported in NCES, The Condition of Education, 1979 ed.

The most controversial technique for the achievement of racial desegregation that the courts have ordered thus far is easily identified. It is busing. In those states with dual school systems, up to the time of the Brown decision, it was permissable to run bus routes designed to perpetuate racially segregated schools. It was common in many of those states. Buses ran overlapping routes, picking up black children for black schools, and white children for white schools. Many of the awkward aspects of those earlier transportation systems still prevail, but the delivery points for the children have been changed.

By ordering buses to be used to carry children for targeted racial mixes, many public schools found themselves starting or expanding student transportation systems. Resentment against busing arose not only because of some racial prejudice, but also it shattered the neighborhood school concept. Neighborhood schools had become items of pride in many communities, and an important part of the twentieth century American culture. Buses are costly. So, costs for initial purchases, salaries for drivers, and maintenance and operations outlays came with the court orders mandating their use. Citizens knew who paid for that transportation service, whether the tax revenues were federal, state, or local. Among all of the techniques that have been ordered by federal judges to accomplish racial desegregation, busing quickly emerged as the most difficult to implement, manage, and maintain. With oil costs a new impinging factor, it does not hold strong promise as a technique that will continue in extensive use for many years.

In approaching the problem of racial desegregation in schools, people have different expectations. To the extent that those expectations do not include surprises, to the extent that those expectations are realized, acceptance of new pupil assignment patterns is enhanced--in all racial groups. Table 3 is a reminder of such procedural and substantive expectations.

Table 3

Expectations from Racial Desegregation in Schools

| What counts toward equality? | What are common techniques? |
|---|---|
| 1. academic achievement | 1. choices for special school services |
| 2. personal interracial friendships | 2. choice-within-ratios |
| 3. interracial socialization | 3. clustered schools |
| | 4. paired schools |
| | 5. busing |

This development has been one identifiable influence in fostering a popular reassessment of the whole concept of free local public school districts. This reassessment has not been discussed much in the professional literature. Like desegregation, its final form is uncertain. It is almost a taboo subject, because taking that position opens that person to the charge of being prejudiced. Nonetheless, it can be perceived in a dramatic shift of the general population's attitude from strong support of locally governed free public education to doubtful acceptance of it as a desirable American institution.

Judicial excess has not been of real assistance. When Judge Arthur Garrity placed himself as the chief administrator of the Boston Public Schools, his performance lost the support and gained the critical condemnation of the New York Times, a newspaper committed to racial desegregation in schools.

The spin off of social and economic consequences from school desegregation has been huge. There are indications of increasingly complex problems. For example, what are some educational reactions to the problems and conflicts in group assertiveness? With many different groups asserting, proposed solutions will sometimes be contradictions. Solution attempts will certainly include more efforts at decentralizing larger school districts at the same time that

other proposals will call for the extension of some public school districts to include larger numbers of pupils. More private schools will be started; more home tutorials will be initiated. Ironically, all such events are in their own way forms of pluralism, but also may be manifestations of rejection by many American citizens of other sociological definitions of that same word: pluralism.

That common American denominator of free locally governed public school districts, strongly endorsed by a local patron group, is losing ground. New forms of cooperation between a variety of educational agencies need to be explored and developed. Educational administrators must promote some convergent thinking. Educational opportunities for minorities must bear scrutiny to see that they are equalized. As both planners and operators, educational administrators have played a key role in the long list of accomplishments for racial minorities in the past two decades. That key role, underpublicized, needs recognition. Great accomplishments by and for minorities have occurred within the public schools.

There is an ebb and flow in social movements. A greater concentration of effort on more universally shared educational problems will do much to restore local free public education to an accepted position of institutional leadership on the American scene. It will also do much to assure that public schools will continue to be a strong source of equal opportunity for every minority group--and, for that matter, for children of all citizens.